

Chapter 21.04

DEFINITIONS

21.04.027 Alter.

“Alter” means any change to the interior or exterior of a structure that does not result in an increase to the gross floor area of the structure.

21.04.140.1 Expansion.

“Expansion” means to enlarge or increase the size of an existing structure or use including the physical size of the property, building, parking and other improvements.

21.04.275 Nonconforming building structure.

“Nonconforming building structure” means a building structure, or portion thereof, which was lawfully erected or altered and maintained, but which, because of the application of this title to it, no longer conforms to the use, height or area regulations current requirements and development standards of the zone in which it is located. (Ord. 9060 § 254)

21.04.278 Nonconforming lot.

“Nonconforming lot” means a lot which was legally created, but which, because of the application of this title to it, no longer conforms to the current requirements and development standards of the zone in which it is located.

21.04.280 Nonconforming use.

~~21.04.280 — “Nonconforming use” means a use which was lawfully established and maintained but which, because of the application of this title to it, no longer conforms to the use regulations of the zone in which it is located. A nonconforming building, or nonconforming portion of the building shall be deemed to constitute a nonconforming use of the land upon which it is located.~~
(Ord. 9060 § 255)

21.04.280 Nonconforming non-residential use.

“Nonconforming non-residential use” means a non-residential use which was lawfully established and maintained, but which, because of the application of this title to it, no longer conforms to the current use regulations of the zone in which it is located.

21.04.281 Nonconforming residential use.

“Nonconforming residential use” means a residential use which was lawfully established and maintained, but which exceeds the Growth Management Control Point or the maximum density range of the underlying General Plan Land Use designation

21.04.299.1 Repair.

“Repair” means any improvements to correct deficiencies in a building or structure.

21.04.299.2 Replace.

“Replace” means to construct a structure that is substantially equivalent in size, shape and location to a structure that has been destroyed or demolished.

21.04.355 354 Structure.

“Structure” means anything constructed or erected which requires location on the ground or attached to something having a location on the ground, but not including fences or walls used as fences ~~less than~~ six feet **or less** in height. **All buildings are structures.**

(Ord. 9060 § 269)

21.04.355 Substandard lot.

See “Nonconforming lot”.

Chapter 21.46

YARDS

21.46.210. Substandard Lots

~~When a lot has less than the minimum required area or width as set forth in any of the zones contained herein, or in a precise plan, and was of record on the effective date of the ordinance codified in this title, such lot shall be deemed to have complied with the minimum lot area or width as set forth in such zone or precise plan. The lot area per dwelling unit shall, however, remain as specified in the applicable area district, except that in no instance shall this provision prevent the erection of a single family dwelling on any substandard lot.~~

~~(Ord. 9060 § 1620)~~

Chapter 21.48

NONCONFORMING LOTS, STRUCTURES AND USES

Sections:

- 21.48.010 Purpose and intent.
- 21.48.020 Applicability.
- 21.48.030 General provisions.
- 21.48.040 Nonconforming lots.
- 21.48.050 Nonconforming residential structures and uses.
- 21.48.060 Nonconforming non-residential structures.
- 21.48.070 Nonconforming non-residential uses.
- 21.48.080 Nonconforming construction permit.
- 21.48.090 Abatement of nonconforming structures and uses.

21.48.010 Purpose and intent.

- A. The purpose and intent of this chapter is to:
 - 1. Allow for the development of nonconforming lots that were legally created.
 - 2. Establish procedures for the abatement of structures and uses that do not comply with all of the requirements and development standards of this title and which may be adverse to the orderly development of the city and to the public health, safety, or welfare of persons or property.
 - 3. Permit the continuation of uses and continued occupancy and maintenance of structures that were legally established but do not comply with all of the requirements and development standards of this title, in a manner that is not adverse to the public health, safety or welfare of persons or property.
 - 4. Permit the repair, alteration, expansion or replacement of nonconforming structures subject to the regulations herein.
 - 5. Permit the expansion or replacement of nonconforming uses subject to the regulations herein.

21.48.020 Applicability.

- A. The provisions of this chapter apply to:
 - 1. Legally created lots which do not conform to the current requirements and development standards of the zone in which they are located.
 - 2. Legally constructed structures and site development features (except for nonconforming signs which are addressed in Section 21.41.130) which do not comply with the current requirements and development standards of the zone in which they are located.
 - 3. Legally established uses which do not conform to the current permitted use regulations of the zone in which they are located.

21.48.030 General provisions.

A. It shall be the responsibility of the owner of a nonconforming lot, structure or use to prove to the planning director that such lot, structure or use was lawfully established, existed on the date of adoption or amendment of this chapter, and has existed continuously as defined herein.

B. Nothing in this chapter shall be deemed to prevent the strengthening or restoring to a safe condition of any structure or part thereof declared to be unsafe by any city official charged with protecting the public safety, upon order of such official. Repairs and alterations may be made to restore a structure to the same condition that existed prior to damage or deterioration, provided that such repairs or structural alterations conform to the provisions of this chapter.

21.48.040 Nonconforming lots.

A. A nonconforming lot may be developed, provided that the development is consistent with the General Plan and complies with all of the requirements and development standards of the zone, master plan, or specific plan in which it is located.

21.48.050 Nonconforming residential structures and uses.

A. Specific Provisions.

1. A nonconforming residential structure and/or nonconforming residential use may be continued and the structure and/or use repaired, altered, expanded or replaced in accordance with the provisions of this chapter provided that the repair, alteration, expansion or replacement shall not:

a. Create an additional structural nonconformity; and,

b. Increase the degree of the existing nonconformity of all or part of such structure or use; and,

c. Reduce the number and size of any required existing parking spaces.

B. Repair or Alteration.

1. A nonconforming residential structure and/or a structure which is occupied by a nonconforming residential use may be repaired or altered subject to issuance of all required discretionary and building permits, provided that the repair or alteration complies with all current fire protection and building codes and regulations contained in Title 17 and Title 18.

C. Expansion.

1. A nonconforming residential structure and/or a nonconforming residential use may be expanded, so as to occupy a greater area of land or more floor area subject to issuance of all required discretionary and building permits and provided that an application for a nonconforming construction permit is submitted and the planning director approves the findings of fact pursuant to Section 21.48.080(B).

D. Replacement in the Event of a Disaster.

1. A nonconforming residential structure and/or nonconforming residential use that is destroyed by fire, explosion, or other casualty or natural disaster, may be replaced subject to issuance of all required discretionary and building permits and provided that an application for a nonconforming construction permit is submitted within one year of the date of the disaster and the planning director approves the findings of fact pursuant to Section 21.48.080(B).

E. Voluntary Demolition and Subsequent Replacement.

1. A nonconforming residential structure and/or nonconforming residential use that is proposed to be voluntarily demolished may be replaced subject to issuance of all required discretionary and building permits and provided that an application for a nonconforming construction permit is submitted and the planning director approves the findings of fact pursuant to Section 21.48.080(B) prior to the date of the demolition.

21.48.060 Nonconforming non-residential structures.

A. Specific Provisions.

1. A nonconforming non-residential structure may be continued and the structure repaired, altered, expanded or replaced in accordance with the provisions of this chapter provided that the repair, alteration, expansion or replacement shall not:

a. Create an additional structural nonconformity; and,

b. Increase the degree of the existing nonconformity of all or part of such structure; and,

c. Reduce the number and size of any required existing parking spaces.

B. Repair or Alteration.

1. A nonconforming non-residential structure may be repaired or altered subject to issuance of all required discretionary and building permits, provided that the repair or alteration complies with all current fire protection and building codes and regulations contained in Title 17 and Title 18.

C. Expansion.

1. A nonconforming non-residential structure may be expanded, so as to occupy a greater area of land or more floor area subject to issuance of all required discretionary and building permits and provided that an application for a nonconforming construction permit is submitted and the planning director approves the findings of fact pursuant to Section 21.48.080(B).

D. Replacement in the Event of a Disaster.

1. A nonconforming non-residential structure that is destroyed by fire, explosion, or other casualty or natural disaster, may be replaced subject to issuance of all required discretionary and building permits and provided that an application for a nonconforming construction permit is submitted within one year of the date of the disaster and the planning director approves the findings of fact pursuant to Section 21.48.080(B).

E. Voluntary Demolition and Subsequent Replacement.

1. A nonconforming non-residential structure that is proposed to be voluntarily demolished may be replaced subject to issuance of all required discretionary and building permits and provided that an application for a nonconforming construction permit is submitted and the planning director approves the findings of fact pursuant to Section 21.48.080(B) prior to the date of the demolition.

21.48.070 Nonconforming non-residential uses.

A. Specific Provisions.

1. A nonconforming non-residential use and/or structure which is occupied by a nonconforming non-residential use may be continued and the structure and/or use repaired, altered, expanded or replaced in accordance with the provisions of this chapter provided that the repair, alteration, expansion or replacement shall not:

a. Increase the degree of the existing nonconformity of all or part of such structure or use; and,

b. Reduce the number and size of any required existing parking spaces.

B. Repair or Alteration.

1. A structure which is occupied by a nonconforming non-residential use may be repaired or altered subject to issuance of all required discretionary and building permits, provided that the repair or alteration complies with all current fire protection and building codes and regulations contained in Title 17 and Title 18.

C. Expansion of Use.

1. A nonconforming non-residential use may be expanded, so as to occupy a greater area of land or more floor area within a structure, subject to issuance of all required discretionary and building permits, provided that an application for a conditional use permit is submitted and the planning commission approves the findings of fact pursuant to Section 21.42.030(A).

D. Relocation.

1. A nonconforming non-residential use may be moved, in whole or in part, to any other on-site structure, or to any other portion of the structure, lot or site within or upon which it is located, subject to issuance of all required discretionary and building permits and provided that an application for a conditional use permit is submitted and the planning commission approves the findings of fact pursuant to Section 21.42.030(A).

E. Change of Use.

1. A nonconforming non-residential use may be changed to a use that is permitted in the zone in which the subject property is located, or may be changed to a use that is more conforming, subject to approval of the planning director and the issuance of a business license.

F. Replacement of Use.

1. A nonconforming non-residential use may be replaced with the same or a similar use, as determined by the planning director, so long as the replacement use does not expand or in any other manner increase the degree of nonconformity with the use regulations of this title.

G. Discontinuance.

1. If a structure or parcel of land which is occupied by a nonconforming non-residential use is, or hereafter becomes vacant and remains unoccupied either temporarily or permanently, whether with the intent to abandon the use or not, for a continuous period of one year or more, the planning director shall determine and shall notify the owner of the property, via certified return receipt mail, that the nonconforming use has been discontinued and the nonconforming use may not be renewed or reestablished.

H. Reestablishment of a Nonconforming Use in the Event of a Disaster.

1. A nonconforming non-residential use that is destroyed by fire, explosion, other casualty or natural disaster, may be reestablished subject to issuance of all required discretionary and building permits and provided that an application for a conditional use permit is submitted within one year of the date of the disaster, and the planning commission approves the findings of fact pursuant to Section 21.42.030(A).

I. Voluntary Demolition and Subsequent Reconstruction.

1. A nonconforming non-residential use that is proposed to be voluntarily demolished and subsequently reconstructed, may be reestablished subject to issuance of all required discretionary and building permits and provided that an application for a conditional use permit is submitted and the planning commission approves the findings of fact pursuant to Section 21.42.030(A) prior to the demolition.

21.48.080 Nonconforming construction permit.

A. Authority.

1. The planning director or his designee may approve, conditionally approve or deny a nonconforming construction permit as prescribed in this chapter, upon making the findings of fact listed in Section 21.42.080(B) of this chapter.

B. Findings of Fact.

1. A nonconforming construction permit shall be granted only if the following facts are found to exist in regard thereto:

a. The expansion/replacement of the structure and/or use would not result in an adverse impact to the health, safety and welfare of surrounding uses, persons or property.

b. The area of expansion shall comply with all current requirements and development standards of the zone in which it is located.

c. The expansion/replacement structure shall comply with all current fire protection and building codes and regulations contained in Title 17 and Title 18.

d. The expansion/replacement would result in a structure that would be considered an improvement to, or complementary to and/or consistent with the character of the neighborhood in which it is located.

C. Application and Fees.

1. Application for a nonconforming construction permit may be made by the owner of the property affected or the authorized agent of the owner.

Application shall be made in writing on a form provided by the planning department. The application shall state fully the circumstances and conditions relied upon as grounds for the application and shall be accompanied by adequate plans, a legal description of the property involved and all other materials as specified by the planning department.

2. At the time of filing the application, the applicant shall pay a processing fee in an amount as specified by city council resolution.

D. Notices.

1. Upon the filing of an application for a nonconforming construction permit, the planning director shall give written notice by mail or personal delivery to the project applicant, the owner of the subject real property or the owner's duly authorized agent and to all property owners as shown on the latest equalized assessment roll within three hundred feet of the subject property at least fifteen days prior to a decision on the application.

E. Decision-Making Process.

1. Applications for nonconforming construction permits shall be acted upon in accordance with the decision process identified below:

a. Any person so notified in accordance with Section 21.48.080(D) above may file written objections or a written request to be heard within ten days after the mailing or personal delivery of the notice. If a written request to be heard is filed, the planning director shall schedule an informal hearing and provide written notice to the applicant and the requestor at least five days prior to the hearing. The hearing is not a formal public hearing.

b. An application for a nonconforming construction permit may be approved, conditionally approved or denied by the planning director based upon his/her review of the facts as set forth in the application and review of the circumstances of the particular case.

c. The planning director may approve the nonconforming construction permit if all of the findings of fact in Section 21.48.080(B) of this chapter are found to exist.

F. Announcement of Findings and Decision.

1. Not more than twenty days following the termination of the proceedings for a nonconforming construction permit, the planning director shall announce his/her findings by letter. The letter shall recite, among other things:

a. The facts and reasons which, in the opinion of the planning director, make the granting or denial of the nonconforming construction permit necessary to carry out the provisions and general purpose of this title;

b. That the nonconforming construction permit be granted or denied;
and,

c. If the letter orders that the nonconforming construction permit be granted, it shall also recite such conditions and limitations as the planning director may impose.

G. Mailing of Notice of Decision.

1. Not later than seven days following the announcement of a decision ordering that a nonconforming construction permit be granted or denied, a copy of

the letter shall be mailed to the applicant at the address shown on the application filed with the planning director.

H. Appeals.

1. In the case of nonconforming construction permits, the action of the planning director may be appealed to the planning commission in accordance with Section 21.54.140 of this title. The planning commission's action to approve, conditionally approve or deny is final.

I. Expiration Period.

1. Expiration of Permit if Not Exercised.

a. Any nonconforming construction permit becomes null and void if not exercised within twenty-four months of the date of approval.

2. Extension of Permit if Not Exercised.

a. The planning director may extend the time within which the right or privilege granted under a nonconforming construction permit must be exercised for one additional year upon receipt of a written request from the applicant prior to the expiration of such nonconforming construction permit. In granting such extension the planning director shall make a written finding that neighborhood conditions have not substantially changed since the granting of such nonconforming construction permit.

J. Amendment.

1. Any approved nonconforming construction permit may be amended by following the same procedure as for approval of a nonconforming construction permit and upon payment of the application fee contained in the most recent fee schedule adopted by the city council.

21.48.090 Abatement of nonconforming structures and uses.

A. If a nonconforming use and/or structure is determined by the planning director to be adverse to the orderly development of the city and/or to the public health, safety, or welfare of persons or property, the planning director shall schedule a public hearing by the planning commission to establish the conditions of abatement and the abatement period. The abatement period shall start from the date of the applicable resolution and shall be:

1. For all Residential Uses.

a. Not less than one or more than five years.

2. For all Non-Residential Uses.

a. Not less than one or more than ten years.

3. For all Nonconforming Structures.

a. Not less than three years or more than twenty-five years.

4. Nothing in these provisions shall preclude abatement of a nuisance pursuant to Section 6.16.150 of the Carlsbad Municipal Code.

B. Public Hearing Notice.

1. Notice of said public hearing shall be given as required by Section 21.54.060.

C. Public Hearing Evidence.

1. The planning commission shall consider at the public hearing, all pertinent data to enable it to arrive at an equitable abatement period which will protect the public health, safety or welfare of persons or property, yet will allow the owner of record, or lessee if applicable, to amortize their investment so that any loss will be minimized.

2. The owner or lessee shall be allowed to present any evidence related to the case.

3. When setting the abatement period, the planning commission shall take into consideration the type of construction, age, condition, and extent of nonconformity of the structure or use in question; any structural alterations or expansions; and/or the installation of major equipment designed into the structure prior to the date of nonconformity.

D. Hearing Decision.

1. After the close of the public hearing, the planning commission shall determine and establish by resolution the abatement period, and shall set forth in said resolution all findings and facts upon which the date of such abatement period is based.

E. Notice of Decision to Owner.

1. The secretary of the planning commission shall formally notify the owner of the property of the action of the planning commission by mailing a copy of the resolution, via certified return receipt mail, within ten days following the date of its adoption by the planning commission.

F. Appeal.

1. The above action of the planning commission shall be final unless an appeal to the city council is filed in accordance with the procedure provided in Section 21.54.150.

G. Recordation.

1. The secretary of the planning commission shall transmit a final signed copy of the resolution of the planning commission or city council, whichever is final, to the County Recorder of San Diego for recordation.

Chapter 21.48

~~NONCONFORMING BUILDINGS AND USES~~

~~21.48.010 Limitation on other uses.~~

~~21.48.020 Removal of nonconforming buildings or change in status of nonconforming use.~~

~~21.48.030 Application of chapter.~~

~~21.48.040 Nonconforming land use when no structure involved.~~

~~21.48.050 Nonconforming use of a conforming building.~~

~~21.48.060 Removal of nonconforming buildings.~~

~~21.48.070 Commission to determine conditions of abatement.~~

~~21.48.080 Alteration, repair or expansion of nonconforming uses.~~

~~21.48.090 Alteration of building when nonconforming by reason of inadequate yards.~~

~~21.48.100 Public utility exemptions.~~

~~21.48.010 Limitation on other uses.~~

~~While a nonconforming use exists on any lot, no additional use may be established thereon, even though such use would be a conforming use.
(Ord. 9060 § 1700)~~

~~21.48.020 Removal of nonconforming buildings or change in status of nonconforming use.~~

~~If any nonconforming building is removed, every future use of the land on which the building is located shall conform to the provisions of this title. If a nonconforming use vacates and is succeeded by another and more restrictive use, it is evidence that the heavier nonconforming use was ended and thereupon immediately loses any vested right as such. If the substitute use is itself nonconforming, the degree of nonconformity may not subsequently be increased by changing to a less restricted use.
(Ord. 9060 § 1701)~~

~~21.48.030 Application of chapter.~~

~~The provisions of this chapter shall apply to buildings, lands and uses which hereafter become nonconforming due to any reclassification of zones under this title.
(Ord. 9060 § 1702)~~

~~21.48.040 Nonconforming land use when no structured involved.~~

~~In any zone the nonconforming use of land wherein no structure is involved shall be abated within one year from the date the ordinance codified in this title becomes~~

~~applicable, and any future use of such land shall conform to the provisions of this ordinance. If the nonconforming use of land existing at the time this ordinance takes effect is thereafter discontinued for six months or more, any future use of such land shall conform to the provisions of this title.~~

~~(Ord. 9060 § 1703)~~

21.48.050 Nonconforming use of a conforming building.

~~———— (a) ——— IN R ZONES. All nonconforming uses of a conforming building in any of the R zones shall be discontinued within three years from the date of formal notice to the owner from the planning commission, or not later than five years from the date the provisions of this ordinance becomes applicable to it.~~

~~———— (b) ——— IN C ZONES. Every nonconforming use of a conforming building in a C zone which use is first permitted in a less restrictive zone shall be completely removed before the expiration of a ten-year period measured from the date the ordinance codified in this title becomes applicable to it.~~

~~———— (c) ——— IN M ZONES. The nonconforming use of a conforming building which is devoted to any residential purpose, hospital (except emergency hospitals), hotel, institution or home for the treatment of convalescent persons, alcoholics, the wounded or mentally infirm, lodginghouses, schools, trailers used for human habitation, or trailer parks, shall be completely removed before the expiration of a ten-year period measured from the date the ordinance codified in this title becomes applicable to it.~~

~~(Ord. 9060 § 1704)~~

21.48.060 Removal of nonconforming buildings.

~~———— (a) ——— IN R ZONES. Every nonconforming building in any of the R zones, except residential buildings, churches and schools, which nonconforming building was designed or intended for a use not permitted in the R zone in which it is located, shall be completely removed or altered to structurally conform to the uses permitted in the zone in which it is located within the herein specified times upon notice from the planning commission, which time is measured from the date of construction. In no case shall this period of time be less than five years from the date of notification by the planning commission. As used in this section the designations "Type 1 Building", "Type 2 Building", "Type 3 Building", "Type 4 Building" and "Type 5 Building", are employed as defined in the existing building ordinance:~~

~~———— (1) ——— If property is occupied by structures of a type for which the existing building ordinance does not require a building permit — One year;~~

~~———— (2) ——— Type 4 or Type 5 buildings (light combustible frame and wood frame) — Forty years;~~

- ~~(3) Type 2 or Type 3 buildings (heavy timber construction and ordinary masonry):~~
 - ~~(A) Apartments, offices, hotels or residences having stores or offices below and apartments or offices above Thirty five years;~~
 - ~~(B) Warehouses, stores, garages, lofts Thirty five years;~~
 - ~~(C) Factories and industrial Forty five years;~~
- ~~(4) Type 1 Buildings (fire resistant):~~
 - ~~(A) Offices and hotels Forty five years;~~
 - ~~(B) Theatres Fifty years;~~
 - ~~(C) Warehouses, lofts, stores, garages Forty five years;~~
 - ~~(D) Industrial Thirty five years;~~
- ~~(b) IN C ZONES:~~
 - ~~(1) Residential structures in a "C" zone existing on the effective date of the ordinance codified in this title shall be considered as nonconforming uses and as such, shall be subject to those provisions of this ordinance which provide that a nonconforming building removed or destroyed may not be replaced by other than a conforming building. Structural alterations or enlargements may be made; provided, that the degree of nonconformity may not be increased by changing to a less restricted residential use or by reducing yard widths less than the prescribed minimum required in R-3 zone;~~
 - ~~(2) Every nonconforming building in a C zone which is designed for a use first permitted in an M zone shall be completely removed or altered to conform to those uses permitted in the C zone in which such building is located within the herein specified times, upon notice from the planning commission, which times are measured from the date of construction except that in no case shall this period of time be less than five years from date of such notice by the planning commission. As used in this section, the designations "Type 1 Building", "Type 2 Building", "Type 3 Building", "Type 4 Building" and "Type 5 Building" are employed as defined in the existing building ordinance:~~
 - ~~(A) Where property is unimproved except for structures of a type for which the existing building ordinance does not require a building~~

~~permit—One year,~~

~~—————(B) Type 4 or Type 5 buildings (light combustible frame and wood frame) Forty years,~~

~~—————(C) Type 2 or Type 3 buildings (heavy timber construction and ordinary masonry):~~

~~—————(i) Apartments, offices, hotels or residences having stores or offices below and apartments or offices above Thirty five years~~

~~—————(ii) Warehouses, stores, garages, lofts Thirty five years~~

~~—————(iii) Factories and industrial Forty five years~~

~~—————(D) Type 1 buildings (fire resistant):~~

~~—————(i) Offices and hotels Forty five years~~

~~—————(ii) Theatres Fifty years~~

~~—————(iii) Warehouses, lofts, stores, garages Forty five years~~

~~—————(iv) Industrial Thirty five years.~~

~~—————(e) IN "M" ZONES.~~

~~—————(1) Residential structures in an "M" zone existing on the effective date of the ordinance codified in this title shall be considered as nonconforming uses and as such, shall be subject to those provisions of this ordinance which provide that a nonconforming building removed or destroyed may not be replaced by other than a conforming building. Structural alterations or enlargements may be made; provided, that the degree of nonconformity may not be increased by changing to a less restricted residential use or by reducing yard widths less than the prescribed minimum required in R-3 zone.~~

~~—————(2) Every nonconforming building in the "M" zone which is used for, or devoted to, any hospital (except emergency hospitals), hotel, institution or home for the treatment of convalescent persons, alcoholics, the wounded or mentally infirm, lodginghouses, schools, trailers used for human habitation, or trailer parks, and which nonconforming building was designed or intended for a use not permitted in the "M" zone in which it is located, shall be completely removed or altered to structurally conform to~~

~~the uses permitted in the zone in which it is located within the herein specified times upon notice from the planning commission, which times are measured from the date of construction, except that in no case shall this period of time be less than five years from the date of such notice. As used in this section the designations "Type 1 building", "Type 2 building", "Type 3 building", "Type 4 building", and "Type 5 building" are employed as defined in the existing building ordinance:~~

- ~~_____ (A) Where property is unimproved except for structures of a type for which the existing building ordinance does not require a building permit—One year,~~
 - ~~_____ (B) Type 4 or Type 5 buildings (light combustible frame and wood frame)—Forty years,~~
 - ~~_____ (C) Type 2 or Type 3 buildings (heavy timber construction and ordinary masonry):~~
 - ~~_____ (i) Apartments, offices, hotels or residences having stores or offices below and apartments or offices above—Thirty five years~~
 - ~~_____ (ii) Warehouses, stores, garages, lofts—Thirty five years.~~
 - ~~_____ (iii) Factories and industrial—Forty five years,~~
 - ~~_____ (D) Type 1 buildings (fire resistant):~~
 - ~~_____ (i) Offices and hotels—Forty five years~~
 - ~~_____ (ii) Theatres—Fifty years~~
 - ~~_____ (iii) Warehouses, lofts, stores, garages—Forty five years~~
 - ~~_____ (iv) Industrial—Thirty five years.~~
- ~~(Ord. 9088 §§ 1, 2; Ord. 9060 § 1705)~~

~~21.48.070 Commission to determine conditions of abatement.~~

~~When any nonconforming condition exists in any zone, other than the nonconforming use of land when no structure is involved, it shall be the responsibility of the planning commission, on its own initiative, to fix a date upon which the nonconforming building was established. It shall also be the responsibility of the planning commission to determine whether, by reason of structural alterations or enlargements, or the installation of major equipment designed into the building prior to~~

~~the date the ordinance codified in this title becomes applicable thereto, it is deemed necessary to establish a later date for abatement than that prescribed herein for the building itself in order to assure that the investment represented by such structural alterations, enlargements or equipment installations may be amortized. In performing this function the commission shall consider all pertinent data in connection therewith to provide the opportunity for the owner of record, or lessee if there be such, to present such evidence as they may possess and which properly relate to such case. When the date of abatement has been determined, the commission by resolution, shall establish such date and shall set forth such facts as bear upon the case upon which the determination of such date of abatement is based, and shall formally notify the owner of such nonconforming property of the action of the commission by mailing to such owner a copy of the formally adopted resolution not later than ten days following the date of subject action by the planning commission.~~

~~(Ord. 9060 § 1706)~~

~~21.48.080 Alteration, repair or expansion of nonconforming uses.~~

~~———— (a) ——— Except as provided in this section, a nonconforming use or building shall not be altered, improved, reconstructed, restored, repaired, intensified, expanded or extended.~~

~~———— (b) ——— A nonconforming building destroyed to the extent of not more than twenty five percent of its replacement value as determined by the community development director at the time of its destruction by fire, explosion, or other casualty or act of God, or public enemy, may be restored and the occupancy or use of such building, or part thereof, which exists at the time of such partial destruction may continue subject to all other provisions of this chapter. Such restoration shall not extend the time of abatement as established by this chapter.~~

~~———— (c) ——— Incidental reconstruction, repair or rebuilding of a nonconforming building rendered necessary by ordinary wear and tear and which does not increase the degree of nonconformity of a nonconforming building, nor increase the degree or size of a nonconforming use may be made, provided that:~~

~~———— (1) ——— The aggregate value of such repairs or alterations shall not exceed ten percent of the building's replacement value at the time the building permit is applied for as determined by the community development director;~~

~~———— (2) ——— That such reconstruction, repair or rebuilding complies with the provisions of Title 18 of this code;~~

~~———— (3) ——— Such repairs, reconstruction or rebuilding shall not extend the time of abatement established by this chapter.~~

~~———— (d) ——— A nonconforming use or building may be altered, improved, reconstructed,~~

restored, repaired or extended as may be permitted by the planning commission upon granting of the conditional use permit processed according to the procedures established in Chapter 21.50 of this code. Before a conditional use permit may be granted all provisions of Chapter 21.50 shall be met and it shall be shown that:

- (1) ——— The aggregate value of the proposed alteration, improvement, reconstruction, restoration, repair or extension shall not exceed twenty-five percent of the total replacement at the time the conditional use permit is applied for as determined by the community development director of all improvements on the site unless the building or structure is changed to a conforming use. Such aggregate value may be increased up to fifty percent of total replacement for those uses which provide a public service traditionally provided by the city;
- (2) ——— The proposed alteration, improvement, reconstruction, restoration, repair or extension is of a type of structure that is specifically designed to be easily removed;
- (3) ——— The proposed alteration, improvement, reconstruction, restoration, repair or extension meets all construction setback, coverage, planning and all other applicable requirements of this code.

In approving such conditional use permit, the planning commission shall establish a date by which all nonconforming structures and uses shall be made conforming or removed from the site. In no event shall the date for such removal or compliance extend beyond the date set according to the provisions of this title for abatement of the existing nonconforming use. Extensions of said date for abatement shall be permitted only upon approval of amendment of the conditional use permit and, then, only upon showing of good cause. A conditional use permit or amendment shall be effective only upon execution by the applicant of written acceptance of the conditional use permit, or amendment. Such acceptance shall include an agreement by the applicant to remove all nonconforming uses and buildings or structures, or make them conforming, on or before the date for removal established by the conditional use permit or amendment in exchange for permission to alter, improve, reconstruct, restore, repair or extend.

The planning director shall cause such conditional use permit, complete with abatement date, or any amendment to the conditional use permit, extending an abatement date, to be recorded at the office of the county recorder within five days after the issuance of the permit or amendment. Any alteration, improvement, reconstruction, restoration, repair or extension undertaken pursuant to the conditional use permit shall be commenced within three months after the issuance of the permit unless an extension is granted by the planning commission.

- (e) ——— No nonconforming building, structure, or use shall be changed to any other nonconforming use, building or structure.

~~(Ord. NS 675 §§ 76 (part), 79 (part), 2003; Ord. 1261 § 50, 1983; Ord. 1256 § 7 (part), 1982; Ord. 9538 § 2, 1979; Ord. 9060 § 1707)~~

~~21.48.090 Alteration of building when nonconforming by reason of inadequate yards.~~

~~Where a building or buildings, and customary accessory buildings are nonconforming only by reason of substandard yards or open spaces, the provisions of this title prohibiting structural alterations or enlargements shall not apply; provided, that any structural alterations or enlargements of an existing building shall conform to the following:~~

- ~~———— (1) ——— That such nonconforming structure may be enlarged or extended to the same degree of nonconformity as may exist but in no event shall such addition or enlargement encroach closer than three feet to any side yard lot line, ten feet to any front line or five feet to any rear lot line;~~
- ~~———— (2) ——— That any such enlargement shall not increase the floor space more than forty percent of that existing prior to such enlargement.~~

~~(Ord. 9060 § 1708)~~

~~21.48.100 Public utility exemptions.~~

~~The foregoing provisions of this chapter concerning the required removal of nonconforming buildings and uses and the reconstruction of nonconforming buildings partially destroyed, shall not apply to public utility buildings and structures when such buildings and structures pertain directly to the rendering of the service or distribution such as power generating plants and electrical distribution substations; water wells and pumps; gas storage, metering and valve control stations. Nor shall anything in this article be construed or applied so as to prevent the expansion, modernization or replacement of such public utility buildings, structures, equipment and features as are used directly for the delivery of, or distribution of, the service; provided the provisions of this section shall not exempt from the provisions covering nonconformity of such buildings, structures, or uses as do not immediately relate to the direct service by consumers, such as warehouses, storage yards and the like.~~

~~(Ord. 9060 § 1709)~~

(Existing definitions are for reference)

Chapter 21.04 – DEFINITIONS

21.04.050 Building.

“Building” means any structure having a roof, including all forms of inhabitable vehicles even though immobilized. Where this title requires, or where special authority granted pursuant to this title requires that a use shall be enclosed within a building, this definition shall be qualified by adding “and enclosed on all sides.”

(Ord. 9060 § 211)

21.42.210 Lot.

"Lot" means a parcel of record legally created by subdivision map, adjustment plat, certificate of compliance or a parcel legally in existence prior to incorporation of the lot into the jurisdiction of the city. Any parcel created prior to May 1, 1956, shall be presumed to be lawfully created if the parcel resulted from a division of land in which fewer than five parcels were created. A lot shall have frontage that allows usable access on a dedicated public street accepted by the city. This street or easement shall have a minimum right-of-way width of forty-two feet. Special lot and street configurations for affordable housing projects may be allowed subject to the provisions of Section 21.53.120.

(Ord. NS-602 § 1, 2001: Ord. 207 § 7, 1992: Ord. 9605 § 1, 1981: Ord. 9459 § 1 (part), 1976: Ord. 9060 § 241)